



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of double his security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 27, 2012. The tenant supplied a copy of the Canada Post Tracking Number to confirm this registered mailing. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits? Is the tenant entitled to a monetary award equivalent to the amount of his pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to a monetary award for losses arising out of this tenancy?

Background and Evidence

The landlord rents this shared living space from the owner of this property. The landlord rented one of his rooms to the tenant in this application and shared common space with the tenant. The parties agreed that the tenancy was to begin on June 1, 2012, although the tenant maintained that he moved into the premises a day or two before June 1, 2012. Although the parties agreed that no written tenancy agreement was created for this tenancy, they did not agree on the monthly rental. The landlord testified that the monthly rent was set at \$390.00, payable in advance by the first of each month. The tenant said that their oral agreement called for monthly rent of \$290.00, but once the tenant moved into the rental premises the landlord raised this monthly rental to \$390.00. The parties provided the following written evidence with respect to this application:

- a Shelter Information form created by the Ministry of Social Development (the Ministry) and signed by the landlord on June 20, 2012, identifying \$390.00 as the tenant's portion of the monthly rent for this rental unit; and
- a June 1, 2012 receipt from the landlord for the tenant's payment of \$390.00 for the monthly rent for June 2012 and \$150.00 for the tenant's security deposit.

Neither party submitted any other substantive evidence other than the following section of the Details of the Dispute completed by the tenant at the time of his application for a monetary award of \$825.00.

...150 Deposit. 150 Penalty. 100 dollars illegal rent increase. 360 boxspring and Mattress = 760 Total + 65 dollars remaining days on months rent when illegally kicking me out.

(as in original)

Although the parties agreed that there was a short term periodic tenancy between them, they disagreed as to the way this tenancy ended. The tenant testified that the tenancy ended because the landlord told him he had to leave. The landlord testified that less than a week before the tenant vacated the rental unit, the tenant advised him that he wanted to end his tenancy. The landlord said that he told the tenant that the tenant would need to give him at least one week's notice so that the landlord could try to find another tenant. If he did not give this amount of notice, the landlord said that he told the tenant he would have to keep the tenant's security deposit. The landlord testified that the tenant became very upset at the prospect of losing his security deposit and returned to the rental unit with a hammer which he waved in a threatening way. At that point, police were called who advised the tenant that he would have to leave the rental unit. The tenant left the rental unit at this stage.

Analysis – Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address

in writing to the landlord. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

The parties are in substantive agreement that the tenant vacated the rental unit on June 28 or June 29, 2012. Although the landlord testified that the tenant never returned his key to the landlord, I am satisfied that since the parties were sharing this accommodation, the tenancy ended by June 29, 2012.

There is disputed evidence as to whether the tenant has provided the landlord with his forwarding address in writing at the end of this tenancy. The tenant testified that he handed his forwarding address in writing to the landlord on July 15, 2012. The tenant also testified that he provided a second copy of his forwarding address to the landlord in writing at a later date, but was uncertain as to when this occurred. The landlord testified that he did not receive the tenant’s forwarding address in writing after this tenancy ended. At the hearing, the tenant testified that the forwarding address identified on his application for dispute resolution was not his actual address but is a forwarding address where he can be sent documents.

As there was no witness to the tenant’s claim that he handed the landlord his forwarding address in writing, I am not satisfied that the tenant has demonstrated that the 15-day time period outlined in section 38(1) of the *Act* has been activated. For this reason, I dismiss the tenant’s claim for a monetary award pursuant to section 38 of the *Act* with leave to reapply once the 15-day time period for the landlord’s return of the security deposit has expired.

After considering the conflicting oral testimony before me at the hearing, I find that as of December 13, 2012, the date of this hearing, the landlord was clearly aware of the tenant’s forwarding address. This forwarding address was provided to the landlord as part of the tenant’s application for dispute resolution. At the hearing, I recommended that the tenant provide additional written notice to the landlord of his forwarding address for the purposes of obtaining a return of his security deposit. However, after the hearing I have reflected upon this matter further and have considered the very real possibility that service issues may arise once more regarding the tenant’s provision of his forwarding address to the landlord. For this reason, I find that as of December 13, 2012 the landlord had the tenant’s forwarding address in writing. I order that the landlord’s responsibilities pursuant to section 38 of the *Act* for the purposes of the return of the tenant’s security deposit take effect on December 17, 2012, the third day after the mailing of this decision. In accordance with section 38 of the *Act*, I find that the landlord has 15 days to take action with respect to the tenant’s security deposit in order to avoid

a future claim by the tenant for the imposition of a penalty equivalent to double his security deposit.

Analysis – Remainder of Tenant's Application for a Monetary Order

I have considered the tenant's claim that the landlord changed the monthly rent from the \$290.00 agreed to in their oral agreement before the tenant moved into the rental unit to \$390.00. In this regard, I find the best evidence available is the landlord's written receipt for the tenant's payment of \$390.00 for rent and \$150.00 for the security deposit dated June 1, 2012. Although the Shelter Information document entered into written evidence is consistent with the above figures, I give less weight to this document as this document was not completed until June 21, 2012, near the end of this very short term tenancy. On a balance of probabilities, I find that the tenant is not entitled to a monetary award for an illegal rent increase as the best evidence available does not support the tenant's claim that the landlord illegally raised his rent for the only month of this tenancy. I dismiss this element of the tenant's claim without leave to reapply.

I have also considered the tenant's claim that he was entitled to a monetary award for his loss of his boxspring and mattress. In this regard, he said that he had nowhere to move to after he left the rental unit and could not store the boxspring and mattress he removed from the rental unit. He maintained that the landlord should be held responsible for his decision to abandon these items after he left the rental unit. He provided no receipts or photographs to support his application for a monetary award of \$360.00 for these items.

The parties agreed that the landlord did not issue a notice to end this tenancy on a prescribed form. The landlord gave undisputed testimony that the tenant did not issue a written notice to end this tenancy. Although the tenant may have been following suggestions provided by the police, there is no evidence before me that this tenancy ended in accordance with a legal notice to end this tenancy by either party. Rather, I find that the tenancy ended when the tenant abandoned the rental unit. Under these circumstances, I dismiss without leave to reapply the tenant's application for a monetary award for the replacement of his boxspring and mattress. I do so as I do not find that landlord should be held responsible for the tenant's decision to abandon these items after the tenant removed them from the rental unit and after this tenancy ended.

I also dismiss the tenant's claim for a monetary award for the recovery of \$65.00 in rent for a portion of his June 2012 rent without leave to reapply. I do not find that the landlord ended this tenancy early as I find that the tenant abandoned the rental unit before the end of June 2012.

Conclusion

I dismiss the tenant's application for a monetary award for the return of double his security deposit with leave to reapply.

I dismiss the remainder of the tenant's application for a monetary award without leave to reapply.

I order that the landlord's responsibilities pursuant to section 38 of the *Act* for the purposes of the return of the tenant's security deposit take effect on December 17, 2012, the third day after the mailing of this decision. The landlord has 15 days to take action with respect to the tenant's security deposit in order to avoid a future claim by the tenant for the imposition of a penalty equivalent to double his security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 14, 2012

Residential Tenancy Branch